

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,)
) No. C 06-2058 SC
Plaintiff,)
)
v.) ORDER REMANDING
) ACTION TO STATE COURT
H&R BLOCK, INC., a foreign)
corporation; H&R BLOCK SERVICES,)
INC., a foreign corporation; BLOCK)
FINANCIAL CORPORATION; BLOCK)
FINANCIAL CORPORATION, a foreign)
corporation; HRB ROYALTY, INC., a)
foreign corporation; and DOES 1)
through 50, inclusive,)
Defendants.

I. INTRODUCTION

Before the Court is a Motion to Remand by Plaintiff California Attorney General on behalf of the People of California ("Plaintiff" or "AG"). Defendants H&R Block, Inc. et al. ("Defendants" or "Block") have opposed the Motion. For the reasons stated herein, the Court GRANTS the Motion to Remand.

II. BACKGROUND

On February 15, 2006, the AG filed a Complaint against Defendants in the Superior Court of California for the City and County of San Francisco. See Not. of Remov., Ex. A. The twenty-page Complaint alleges a pattern of misconduct by Block in their

1 provision of tax preparation services related to Block's sale and
2 marketing of Refund Anticipation Loans ("RAL"). See Id. The
3 complained of conduct includes inter alia:

4 -Binding RAL applicants to participation in debt collection
5 scheme related to past loans without properly disclosing the
6 nature of the arrangement and misleadingly portraying it. see
7 Compl., ¶ ¶ 31-36.

8 -Failing to make proper "no purchase necessary" disclosures
9 in a lottery-type promotion. Id., ¶ 51.

10 -Improperly handling tax-payer information. Id., ¶ ¶47-49.

11 -Failing to advise their poor clients of the relative
12 advantages of other options to borrowing against their tax
13 refund, in violation of their fiduciary duties. Id., ¶ ¶ 25-
14 28.

15 -Making deceptive and misleading statements to consumers
16 regarding RALs as an inducement for consumers to purchase
17 them. Id., ¶ ¶ 37-45.

18 -Steering clients to expensive check-cashing businesses
19 without adequately disclosing Blocks' financial interest in
20 clients using the services of these businesses. Id., ¶ 50.

21 -Failing to make proper disclosure of fees charged for
22 deferring service charges in violation of the Truth-in-
23 Lending Act ("TILA"), 15 U.S.C. §§ 1631, 1632, and related
24 regulation. Id., ¶ ¶ 29, 56(g)

25 In alleging the complained of conduct, the Complaint
26 describes the high costs associated with the RALs and other
27 related products offered by Block, but does not specifically
28 allege that these costs constituted wrongful conduct in-and-of-
themselves. See, e.g., id., ¶ ¶ 24, 41, 44. For example, in an
early section of the Complaint in which the RAL program is
outlined, the Complaint describes RALs as "very short-term, very
expensive loans" and states that those who purchase them
"typically pay interest, depending on the size of the loan, at an
Annual Percentage Rate (APR) of from 40% to well over 100% APR,"

1 and that if associated fees are included "the rate could be in
2 excess of 500%." Id., ¶ 24.

3 On the basis of the alleged wrongful conduct, the Complaint
4 makes two state law claims: a violation of California Business and
5 Professional Code Section 17500 and a violation of California
6 Business Code Section 17200. Id., ¶ ¶ 52-56. Section 17500
7 prohibits inter alia the making of "[f]alse or misleading
8 statements" in an attempt to induce the public of California to
9 enter into an obligation to purchase goods or services. Cal. Bus.
10 & Prof. Code § 17500. Section 17200 prohibits "[u]nfair
11 competition," including inter alia an "unlawful, unfair or
12 fraudulent business act or practice and unfair, deceptive, untrue
13 or misleading advertising." Cal. Bus. & Prof. Code § 17200. The
14 Complaint requests various types of relief available under the
15 Business and Professional Code, including civil penalties,
16 restitution, and an order enjoining any of the activities found to
17 be in violation of Sections 17200 and 17500. Comp. at 19-20.

18 On March 17, 2006, Defendants removed the case to this Court.
19 See Not. of Remov. On May 16, 2006, the AG moved to remand the
20 case to state court. See Mot. to Remand.

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22 **III. LEGAL STANDARD**

23 A complaint originally filed in state court may be removed to
24 federal court pursuant to 28 U.S.C. § 1441 within thirty days of
25 service on the defendant. 28 U.S.C. § 1446(b).

26 On a motion by a plaintiff to remand to state court, a
27 defendant bears the burden of showing that a federal court would

1 have jurisdiction from the outset; in other words, that removal
2 was proper. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir.
3 1992). To meet this burden, a defendant must overcome a "strong
4 presumption" against removal. Id. Courts "strictly construe the
5 removal statute against removal jurisdiction[, and] federal
6 jurisdiction must be rejected if there is any doubt as to the
7 right of removal in the first instance." Id., see also Plute v.
8 Roadway Package Sys., Inc., 141 F.Supp.2d 1005, 1008 (N.D. Cal.
9 2001)("any doubt is resolved in favor of remand"). The bar is
10 further raised when the removal in question is of an action
11 brought originally by a State in a State court. Franchise Tax
12 Board of the State of California v. Construction Laborers Vacation
13 Trust for Southern California et al., 103 S Ct. 2841, 2853, n. 22
14 (1983) ("[C]onsiderations of comity make us reluctant to snatch
15 cases which a State has brought from the courts of that State,
16 unless some clear rule demands it."). As the language of these
17 standards makes clear, a district court's subject matter
18 jurisdiction is determined on the basis of the complaint at time
19 of removal, not as subsequently amended. Sparta Surgical Corp. v.
20 National Ass'n of Sec. Dealers, Inc., 159 F.3d 1209, 1213 (9th
21 Cir. 1998).

22 23 **IV. DISCUSSION**

24 Defendant presents two basic arguments in favor of removal
25 (and in opposition to remand), both premised on the Court's
26 federal question jurisdiction under 28 U.S.C. § 1331: 1) the AG's
27 suit is preempted by the National Bank Act ("NBA"), 12 U.S.C. §§

21 et seq.; and, somewhat alternatively, 2) the AG's state law claim presents a substantial federal question which justifies removal. See Defs' Opp. Neither is persuasive.

A. The AG's Suit is Not Preempted

The core of the Defendants' preemption argument is that the AG's suit is really about usury and so the actions of Block's partner in the disputed business, HSBC, and, as such, is completely preempted by the NBA. See Defs' Opp. This argument fails.

What is known as the "well-pleaded complaint" rule provides the basic guidelines for determining whether a district court has subject matter jurisdiction grounded on the existence of a federal question. Franchise Tax Board, 103 S Ct. at 2846. Under this rule, a district court looks exclusively to the plaintiff's complaint to determine "whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute." Id. (internal quotation omitted). Under this "more-or-less automatic[]" rule, if the complaint on its face presents no federal question, no subject matter jurisdiction exists. Id. "In addition, the plaintiff is the 'master' of her case, and if she can maintain her claims on both state and federal grounds, she may ignore the federal question, assert only state claims, and defeat removal." Duncan v. Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996).

Defendants implicitly concede that the AG's complaint meets this standard, but argue that Defendants should be allowed to avoid remand nonetheless on the basis of an exception to the rule

1 articulated by the Supreme Court in Beneficial Nat. Bank v.
2 Anderson, 123 S. Ct. 2058 (2003). See Opp. at 4. Specifically,
3 Defendants point to the exception which the Supreme Court found to
4 exist "when a federal statute wholly displaces the state law cause
5 of action." Anderson, 123 S. Ct. at 2063; see Opp. at 4.
6 According to Defendants, because the Complaint mentions the high
7 cost of the RALs, it is actually a usury case and pre-empted by
8 the NBA. Id.

9 The Court need not examine whether such a usury claim would
10 be pre-empted by the NBA because the AG makes no usury claim.
11 Rather, the AG's two causes of action are as the AG's Complaint
12 states them: claims that Block violated provisions of
13 California's Business and Professional Code which prohibit
14 misleading advertising and unfair business practices. See Comp.
15 The Complaint nowhere states that the alleged high cost of the
16 RALs form the basis of the complained of violations, but rather
17 makes clear that the problem with the RALs is the way Block
18 markets and sells them. See id. The Complaint's statements
19 regarding the RALs' costs are contextual, meant to inform the
20 court about the consequences of Block's alleged malfeasance and
21 thus impress upon the court AG's need for relief. They certainly
22 do not form a basis for this Court to snatch the case from the
23 state court in which the state of California brought it. See
24 Franchise Tax Board, 103 S. Ct. at 2853, n. 22.

25 **B. The AG's Suit Does Not Present Substantial Federal**
26 **Questions Mandating Removal**

27 Somewhat alternatively, Defendants argue the Court
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"independently has jurisdiction over this action under 28 U.S.C. §§ 1441 and 1331 because the AG's demand for relief depends on a substantial federal question." Defs' Opp. at 11. Specifically, Defendants argue that the AG's request for an order enjoining "defendants from '[d]oing any of the acts set forth in this complaint'" necessarily raises substantial and disputed federal issues because a single violation of the TILA is among the many allegations of malfeasance on which the Complaint predicates its Section 7200 unfair competition cause of action. *Id.* at 14-15 (quoting Compl. at 19).¹ This argument is equally unavailing.

In Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing, the Supreme Court stated the following basic standard for removal on these grounds:

[T]he question is, does a state law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibility.

125 S. Ct. 2363, 2368 (2005)(emphasis added). Thus, to prevail, Defendants must show: 1) that the AG's state law claim necessarily raises the federal issues they claim it does; 2) that these issues are actually disputed and substantial; and 3) assuming conditions 1 and 2 are met, that it is appropriate, from a state-federal balance of responsibility perspective, for this

¹Defendants also state in a footnote that the Court can base its subject matter jurisdiction under this doctrine on the basis of the AG's allegation that Block has violated sections of the Internal Revenue Code, 26 U.S.C. § 7216, by disclosing certain taxpayer information and "the AG's argument predicated on Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692e-g." Opp. at 13. These un-argued statements fail to satisfy Defendants' burden in opposing the AG's Motion.

1 Court to take this case from a state court and hear it. In light
 2 of this demanding standard, it is no surprise that the Supreme
 3 Court has recently described the category of cases which meet it
 4 as "slim[,] . . . special and small." Empire Healthchoice
 5 Assurance, Inc. v. McVeigh, 126 S. Ct. 2121, 2137 (2006).

6 To meet the first part of this standard, a removing party
 7 must show that resolution of the state law claim necessitates
 8 addressing an issue of federal law that is both disputed and
 9 substantial. Grable, 125 S. Ct. at 2368. It is not sufficient to
 10 show that a state law claim simply touches upon or implicates a
 11 federal issue, but rather determination of the federal issue must
 12 be necessary to resolve the claim. Id. In other words, the
 13 elements of the state claim which involve a federal issue must be
 14 "essential parts of the plaintiffs' cause of action." Id., at
 15 2368-69.²

16 The AG's allegation that Block has violated the TILA does not
 17 form an "essential part[]" of the AG's Section 17200 cause of
 18 action against Block. Grable, 125 S. Ct. at 2368. Rather, it is
 19 but one of eight basic predicate violations (many containing sub-
 20 violations) on which the AG bases its Section 17200 cause of
 21 action. See Compl., ¶ 56. If the AG successfully proves any one
 22 of these predicate acts it will prevail on its Section 17200 cause

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 24 ²The federal issue allegedly raised must also be legal, as
 25 opposed to factual, going to "validity, construction, or effect" of
 26 an element of federal law. Id. at 2369 n. 3. (internal quotations
 27 omitted). And the issue must be both "actually disputed and
 28 substantial." Id. at 2368; see also McVeigh, 126 S. Ct. at 2137
 ("Grable presented a nearly 'pure issue of law,' one 'that could be
 settled once and for all and thereafter would govern numerous tax
 and sale cases.'") (internal citation omitted).

1 of action. See Cal. Bus. & Prof. Code § 17200. The TILA
2 violation predicate, therefore is not, and cannot be characterized
3 as, an essential part of that cause of action. Compare Grable 125
4 S. Ct. at 2368 ("Whether Grable was given notice within the
5 meaning of the federal statute is thus an essential element of
6 this quiet title case . . .; it appears to be the only legal or
7 factual issue contested in the case.").

8 Defendants' argument that, should the AG prevail, the State
9 Court will have to determine whether Block has violated the TILA
10 in making its decision whether to order part of the relief
11 requested is unavailing. There are many instances in which a
12 state court is called upon to determine an issue of federal law
13 that do not provide a basis for removal jurisdiction. For
14 example, removal is not appropriate when an answer to a state law
15 cause of action is based on a federal law defense. See Franchise
16 Tax Board, 103 S. Ct. at 2848. If upon remand the state court
17 commits an error in dealing with this minor part of the AG's
18 claims against Block, Defendants, like any litigants, can seek
19 remedy "through the state appellate courts and ultimately [the
20 Supreme] Court." Atlantic Coast Line R.R. Co. v. Brotherhood of
21 Locomotive Engineers, 398 U.S. 281, 287 (1970).

22 Finally, even if the Court were to accept Defendants'
23 strained reading of this standard and find that the AG's predicate
24 allegation that Defendants violated the TILA necessarily raises a
25 federal law issue (which it does not), went through the second
26 part of analysis (which it won't) and determined this issue was
27 substantial and disputed, the Court would still decline to take
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1 the case from state court. "[T]he presence of a disputed issue
2 and the ostensible importance of a federal forum are never
3 necessarily dispositive; there must always be an assessment of any
4 disruptive portent in exercising federal jurisdiction." Grable,
5 125 S. Ct. at 2368. In this case, brought by the state of
6 California in a California state court to enforce California laws
7 for conduct which occurred in California and which allegedly
8 victimized California citizens, the "disruptive portent" is
9 particularly stark. Id.; see Franchise Tax Board, 103 S Ct. at
10 2853, n. 22; State of Arkansas v. Kansas & Texas Coal Co., 183
11 U.S. 185, 189 (1901); Barry Friedman, Under the Law of Federal
12 Jurisdiction: Allocating Cases Between Federal and State Courts,
13 104 Colum. L. Rev. 1211, 1242 (2004) ("A sovereign's interest in
14 enforcement encompasses defining the laws or rules that govern
15 society, seeing that those laws and rules are obeyed, and
16 punishing those who transgress them. This enforcement interest is
17 a quintessential aspect of sovereignty. . . . The principle that a
18 state's enforcement interest may justify litigation in state court
19 encounters virtually no dissent.")

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